

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** FAIRCHILD HOLDING CORP.

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Appeal No. 98-2594  
Reexamination Control No. 90/004,492<sup>1</sup>

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ON BRIEF

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Before CALVERT, COHEN and FRANKFORT, ***Administrative Patent Judges.***

FRANKFORT, ***Administrative Patent Judge.***

**DECISION ON APPEAL**

This is a decision on appeal from the examiner's final

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<sup>1</sup>Request filed December 19, 1996, for reexamination of U.S. Patent No. 4,854,198 granted August 8, 1989, based on Application 07/084,580 filed August 11, 1987, which was a continuation-in-part of Application 06/887,054, filed July 18, 1986.

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rejection of claims 1, 2, 4, 5 and 7 through 11 in a Reexamination proceeding identified by Control No. 90/004492 for U.S. Patent No. 4,854,198, issued on August 8, 1989. The original patent included claims 1 through 11. The patent claims have not been amended during this Reexamination proceeding. The patentability of claims 3 and 6 has been confirmed.

Appellant's invention relates to a wrenching tool which is designed specifically for the removal and application of frangible fasteners. Figure 6 of the drawings shows the tool being used to apply a frangible fastener to a bolt member (52) to secure plates (54) and (56) together. As indicated on page 1 of the specification, the wrenching tool is engaged with the distal wrenching ring (50) and rotated in a clockwise manner to apply the fastener and also to twist the wrenching ring from the threaded collar portion thereof when a predetermined torsional loading level is exceeded. Figure 7 shows the tool being used to subsequently remove the threaded collar or fastening ring (60) of the frangible fastener from the bolt (52). Independent claim 1 is representative of the claimed

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subject matter. A correct copy of claim 1 is attached to this decision.<sup>2</sup>

The references of record relied upon by the examiner in rejections of the appealed claims under 35 U.S.C. 103 are:

Thompson	715,900	Dec. 16, 1902
Habel	1,075,100	Oct. 07, 1913
Pascoe	1,859,526	May 24, 1932
McLaughlin	2,733,736	Feb. 07, 1956

Pasbrig (German Offenlegungsschrift)	2,022,610	Nov. 18, 1971
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HI-SHEAR Tool Catalog, Drawing No. HLH128, Removal Tool Assembly, sheets 1-2, copyright 1972, Hi-Shear Corporation. (HI-SHEAR)

Claims 1, 2 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over HI-SHEAR in view of McLaughlin.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over HI-SHEAR in view of McLaughlin as applied to claim 1 above, and further in view of Thompson.

Claim 7 stands rejected under 35 U.S.C. § 103 as being

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<sup>2</sup> The copy of claim 1 appended to appellant's brief is not a correct copy of claim 1 on appeal.

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unpatentable over HI-SHEAR in view of McLaughlin and Thompson as applied to claims 4 and 5 above, and further in view of Pasbrig.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over HI-SHEAR in view of McLaughlin as applied to claim 1 above, and further in view of Pascoe.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over HI-SHEAR in view of McLaughlin as applied to claim 1 above, and further in view of Habel.

Rather than reiterate the examiner's explanation of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 16, mailed April 7, 1998) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 15, filed March 2, 1998) and reply brief (Paper No. 17, filed April 28, 1998) for appellant's arguments thereagainst.

OPINION

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In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of this review, we have made the determination that the examiner's respective rejections of the appealed claims under 35 U.S.C. § 103 cannot be sustained. Our reasons follow.

Before turning to the examiner's rejections, we note that claim 1, lines 20-25, require a bend in the handle (20) of the tool

to permit placement of the jaw end of said handle  
flush against a work surface while providing hand  
gripping clearance and preventing reversal of said  
tool to place said top surface of said socket head  
flush against said work surface

Further, claim 1 defines the socket head as having "a top surface and planar bottom surface" (claim 1, lines 3-4).

These "top" and "bottom" surfaces of the socket head are set forth with regard to the socket head (30) as seen in Figure 1 of the patent drawings. Thus, when the tool is used as seen in

Figure 7, the "top surface" of the socket head is flush against the work surface (54), while in Figure 6, when the tool is used to apply a frangible fastener, it is the "planar bottom surface" of the socket head which faces the work surface (54) and is spaced therefrom. With this understanding, it is clear that the recitation in line 24 of claim 1 of "said top surface" should actually be --- said planar bottom surface ---. We have so interpreted the claim for purposes of our review of the examiner's rejections. Correction of this inaccuracy should be made during any further prosecution before the examiner.

Looking first to the examiner's rejection of claims 1, 2 and 9 under 35 U.S.C. § 103, we note that the tool assembly in HI-SHEAR is specifically designed to remove a locking collar or fastener ring of a frangible fastener from a bolt member. As generally shown in the drawing on the top of sheet 1 of HI-SHEAR and in the figures on sheet 2 thereof, the tool assembly therein includes a housing (1), a cam member (2) mounted within the housing via a snap ring (3) and a removable sliding bar T-handle. As explained on sheet 1 of HI-SHEAR the tool

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assembly therein is used by (a) placing the housing over the locking collar of the fastener to be removed until it bottoms on the structure, (b) rotating the cam until the serrations on the cam contact the base of the fastener collar, and (c) then inserting the square drive of the T-handle as shown in the diagram and rotating the entire assembly counterclockwise until the collar is loosened sufficiently to permit removal of the collar by hand.

McLaughlin discloses a tool for removing the head portion (A) of a snap type tie rod (R) used to hold form walls against relative displacement during the construction of a concrete wall.

The tool includes a housing structure formed by plates (1, 3 and 4) and a handle or lever (11) pivotally mounted between the backing and side plates (1) and (3). As indicated in column 2, lines 38-44,

The lever 11 is formed with an offset as at 11a so that the head portion of the wrench may be

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positioned close to a form wall when such wrench is applied to the projecting head A of tie rod R. When so positioned, the handle end of the lever is far enough from the form wall to permit a workman to manipulate the wrench conveniently.

The lever also includes a serrated jaw portion (12) at a distal end thereof, while the intermediate plate (4) includes a fixed serrated jaw portion (5). Operation of the wrenching/breaking tool of McLaughlin is described in column 2, lines 45-61.

The examiner's statements notwithstanding, when the teachings of HI-SHEAR and McLaughlin are considered collectively, it does not appear to us that they would have, by themselves, suggested their combination to one of ordinary skill in the art, as proposed by the examiner, so as to result in the wrenching tool defined in appellant's claims on appeal. Contrary to the examiner's position, we fail to see anything in the prior art

relied upon which would have fairly led one of ordinary skill in the art to modify the frangible fastener removal tool of



HI-SHEAR by significantly altering the structure of the tool therein in view of the generally unrelated teachings of the tie rod breaking tool in McLaughlin. As for the examiner's statement concerning the motivation for the combination, we note that the T-handle of HI-SHEAR is already spaced away from the work surface therein to allow easy manipulation by a user and apparently permits adequate torque to be applied to the collar to loosen it, thus, these considerations would seem to be of no moment in providing support for any combination of HI-SHEAR and McLaughlin.

Moreover, as pointed out by appellant (brief, pages 7-12), even if the combination as proposed by the examiner were made, a wrenching tool for "removing and securing frangible fasteners onto a work surface" (emphasis added), as set forth in claim 1 on appeal, would not be achieved by the combination. As is apparent from the diagram on sheet 1 of HI-SHEAR, the configuration of the stepped socket in the housing of the tool therein and the operation of the pivoted handle of the examiner's proposed

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modification would preclude use of the tool for "securing" or applying frangible fasteners. The examiner's position that the recitations in the preamble of appellant's claim 1 are merely directed to "intended use" of the invention therein and do not result in a structural difference between the claimed invention and the prior art, is in error. The tool defined in appellant's claim 1 is required by the clear language of the claim to have the capability of both removing and securing a frangible fastener onto a work surface, thus providing the claimed tool with a specific limitation on its structure. As apparently recognized by the examiner, the tool of HI-SHEAR as modified in the rejection of claim 1 before us on appeal would clearly not have a structure which would provide the capability of allowing that tool to be used for applying a frangible fastener, as is required in appellant's claim 1 on appeal.

Based on the foregoing, we are compelled to reverse the examiner's rejection of claims 1, 2 and 9 under 35 U.S.C. § 103.

Our review of the other references additionally applied

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by the examiner against dependent claims 4, 5, 7, 8, 10 and 11

reveals nothing which would supply the deficiencies in the  
teachings of HI-SHEAR and McLaughlin noted above.

Accordingly, the rejection of these dependent claims under 35  
U.S.C. § 103 will likewise not be sustained.

The decision of the examiner rejecting claims 1, 2, 4, 5  
and 7 through 11 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
IRWIN CHARLES COHEN	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	

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Robert E. Strauss  
Plante & Strauss  
1212 North Broadway  
Suite 202  
Santa Ana, CA 92701